

THE MALAY RULERS Their Position And Article 38(4)

DATUK DR. WAN AHMAD FAUZI WAN HUSAIN

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Dedication to,

Beloved Father Allahyarham Ustaz Haji Wan Husain bin Haji Wan Embong and beloved Mother Hajah Wan Munah binti Haji Wan Embong Mohd my deepest gratitude for raising me with endless patience and loving care.

Not to be forgotten, my lovely wife YM Datin Sharifah Zarinatasha binti Syed Azni Jamalullail and our beloved children, namely:

Wan Nur Fareeha, Wan Muhammad Zamakhsyari, Wan Nur Athiera, Wan Muhammad Rayyan, Wan Muhammad Nayell Rifqi, **and** Wan Nur Nisreena Aulia

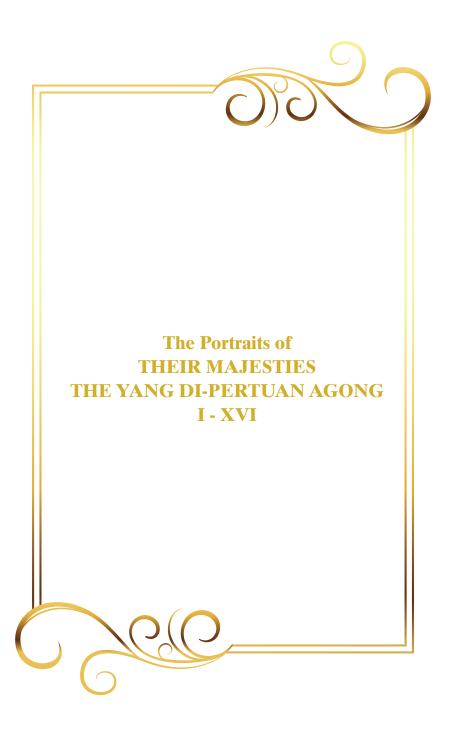
who have been the inspiration for me to continually strive for greater achievements, in order to leave behind a legacy that may serve as guidance for them and future generations.

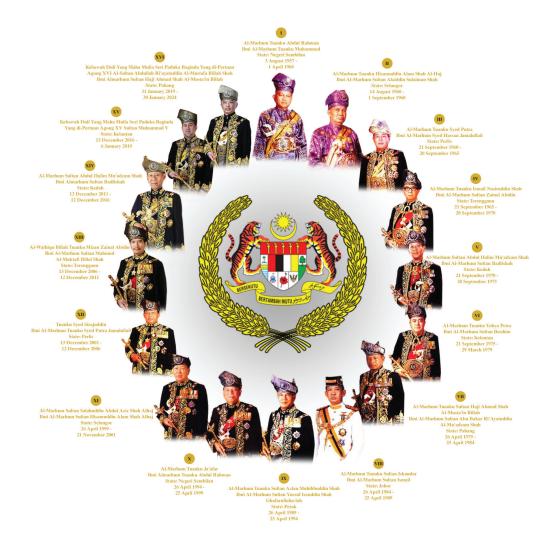


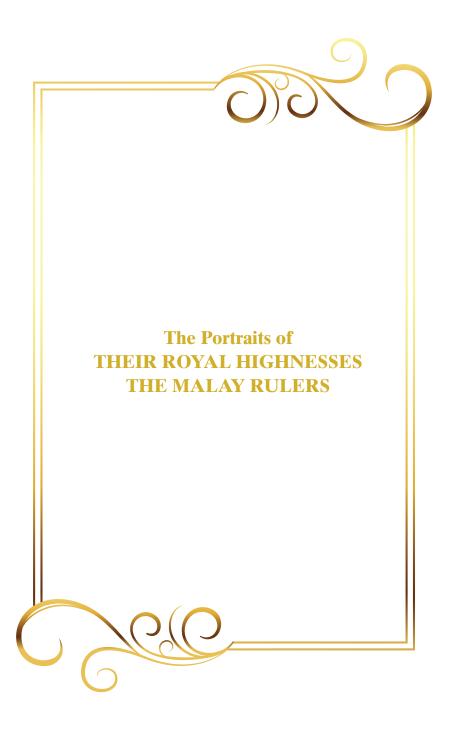
HIS MAJESTY SULTAN IBRAHIM KING OF MALAYSIA

D.K. (Johor), D.K. (Perak), D.K. (Kelantan), D.K. (Perlis), D.K. (Selangor), D.K. (Negeri Sembilan), D.K. (Terengganu), D.K.M.B. (Brunei), S.P.M.J, S.S.I.J, S.P.M.T, S.M.N, S.P.M.K, S.P.M.P, P.I.S.











Kebawah Duli Yang Maha Mulia Al-Wathiqu Billah Sultan Mizan Zainal Abidin Ibni Almarhum Sultan Mahmud Al-Muktafi Billah Shah

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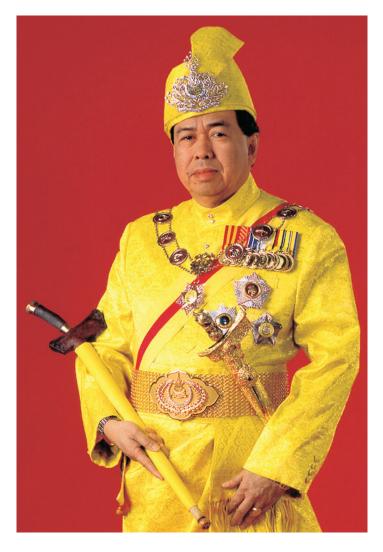
HRH The Sultan of Terengganu



Duli Yang Maha Mulia Tuanku Syed Sirajuddin Ibni Almarhum Tuanku Syed Putra Jamalullail

D.K.P., D.K., S.S.P.J., D.K.M., D.M.N., D.K. (Perak), D.K (Negeri Sembilan), D.K. (Kedah), D.K. (Kelantan), D.K.M.B. (Brunei), D.K. (Selangor), D.K. (Pahang), D.K. II (Terengganu), S.P.M.J., S.P.C.M., S.S.M.T., Grand Order of King Tomislav (Croatia), Grand Collier De L'Independence (Grand Medal of the Independence) - Cambodia, Grand Croix De L'Ordre (Royal Sash) - Cambodia, Cavaliere Di Gran Croce Decorato Di Gran Cordone (Italy), Qiladah Badr Al-Kubra (Arab Saudi), Decoration of Omayad - The Finest Decoration (Syria), Knight of the Royal Order of the Seraphim (Sweden), Grand Cordon of the Order of the Sacred Treasure (Japan).

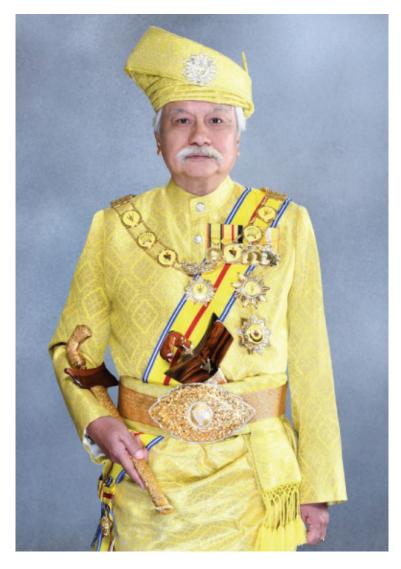
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Duli Yang Maha Mulia Yang di-Pertuan Besar Negeri Sembilan Darul Khusus, Tuanku Muhriz Ibni Almarhum Tuanku Munawir

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HRH The Sultan of Kelantan



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HRH The Sultan of Kedah



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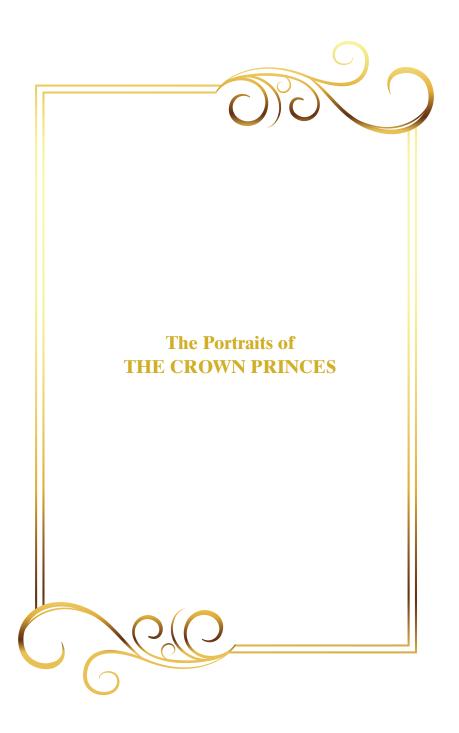
HRH The Sultan of Pahang



Duli Yang Amat Mulia Tunku Ismail Ibni Sultan Ibrahim

D.K., S.P.M.J, S.M.I.J., S.S.I.J, P.I.S., P.S.I. - (Tunku Mahkota Johor)

HRH The Regent of Johor





Duli Yang Teramat Mulia Tuanku Syed Faizuddin Putra Ibni Tuanku Syed Sirajuddin Jamalullail

D.K., S.P.M.P., P.A.T.

DYTM Raja Muda Perlis

(Proclaimed on 1 August 2000)



Duli Yang Teramat Mulia Tengku Amir Shah Ibni Sultan Sharafuddin Idris Shah Alhaj

D.K., S.P.M.S., S.S.I.S., S.P.M.K.

DYTM Raja Muda Selangor

(Proclaimed on 3 May 2002)



Duli Yang Teramat Mulia Tengku Muhammad Ismail Ibni Al-Wathiqu Billah Sultan Mizan Zainal Abidin

D.K.R., D.K., S.S.M.Z.

DYTM Yang di-Pertuan Muda Terengganu

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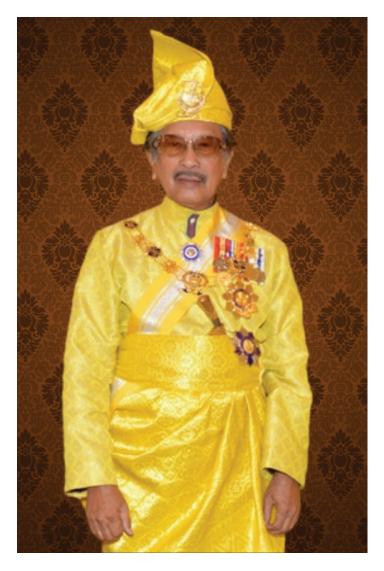


Duli Yang Amat Mulia Tunku Ismail Ibni Sultan Ibrahim

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KDPM Tengku Mahkota Pahang

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D.K. (Kelantan)

YTM Tengku Mahkota Kelantan

(Proclaimed on 23 December 2023)

THE MALAY RULERS

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PREFACE

In the Name of Allah, the Most Merciful and Compassionate

ALAYSIA is a monarchy that safeguards constitutional supremacy. Despite their prominent status in the nation, the role of the Malay Rulers remains a topic of scholarly inquiry and public discourse. Their involvement in defining the rule of law is crucial, especially in addressing modern constitutional challenges.

The evolving landscape of Malaysian society, shaped by exposure to foreign doctrines, political conflicts, and religious diversity, presents new challenges for the Malay Rulers and the Conference of Rulers at the federal level. Understanding their constitutional roles and responsibilities requires a right interpretation of their existence, position, and influence in the nation's governance.

Against this backdrop, The Malay Rulers: Their Position and Article 38(4) examines the position of the Malay Rulers under Article 38(4) of the Federal Constitution by applying established principles of constitutional interpretation. This book aims to clarify their influence in shaping the rule of law while achieving the following objectives:

- 1. Articulating the Malay Rulers' sovereignty under Article 181(1) of the Federal Constitution.
- 2. Examining the sustainability of their Indigenous sovereignty, its legal implications, and its constitutional protections.

The Federal Court, in *Indira Gandhi* (2018), adopted constitutional interpretation principles formulated by the Supreme Court of Canada. The Court observed:

The rules of constitutional interpretation require that constitutional documents be interpreted in a broad and purposive manner and placed in their proper linguistic, philosophic, and historical contexts... Generally, a constitutional interpretation must be informed by the foundational principles of the

constitution, which include federalism, democracy, the protection of minorities, as well as constitutionalism and the rule of law.

To ensure interpretation aligns with this approach, this book applies Watanic jurisprudence analysis. Watanic jurisprudence provides a framework for interpreting Malaysia's constitutional provisions and legal principles within their local historical, linguistic, and philosophical contexts. This methodology is especially relevant for analysing the constitutional system of a sovereign nation, as it first determines whether its legal framework operates as a continuum or dichotomy before further analysis.

Chapter 1 defines the position of the Yang di-Pertuan Agong and Malay Rulers under Article 38(4). Chapter 2 elaborates on the concept of sovereignty, distinguishing between continuum and dichotomy legal frameworks. Chapter 3 examines the watanic constitution and compares its features with those of modern constitutions. Chapter 4 explores the sovereign status of the rulers. Chapters 5 and 6 provide a jurisprudential analysis of the Malay Rulers' sovereignty under Article 181(1) from a legal-historical perspective, and Chapter 7 concludes with an analysis of the constitutional protections granted to the Malay Rulers, particularly under Articles 38(4), 159(5), and 150(6A).

This book builds upon my PhD thesis, "*The Concept of the Malay Rulers' Indigenous Sovereignty in the Malaysian Federal Constitution According to Legal History.*" The first publication derived from this thesis, "*Kedaulatan Raja-Raja Melayu: Jurisprudens, Governan dan Prinsip Perlembagaan Persekutuan,*" was written in Bahasa Melayu. This latest work results from further research supported by ISTAC-IIUM (Project ID ISTAC23-013-0015) and additional research grants registered under SPP24-223-0223 and SPP24-220-0220.

I would like to record my highest appreciation, "*Patik Menjunjung Kasih*" for Her Royal Highness the Tengku Ampuan Pahang the Constitutional Head of the International Islamic University of Malaysia. Her Royal Highness' wisdom, knowledge, and great leadership inspire me to go extra miles in my research. Special thanks are dedicated to the British National Archives, the British Library, SOAS of London, Pejabat Penyimpan Mohor Besar Raja-Raja, Istana Negara, Arkib Negara Malaysia, Dewan Bahasa dan Pustaka, Perpustakaan Negara Malaysia, Arsip Indonesia, and many places where I performed data collection.

A special thanks to Emeritus Professor Datuk Dr. Osman Bakar, ISTAC-IIUM, Abad Sinergy Sdn. Bhd., YB Senator Dato' Setia Haji Salehuddin Saidin, Datuk Professor Dr. Abdelaziz Berghout, Dr. Anisah Che Ngah, Dato' Dr. Mohamed Anwar Omardin, Dato' Ahmad Farid Abdul Jalal, Professor Dr. Nik Ahmad Kamal Nik Mahmood, Professor Dr. Jasser Auda, Dr. Amer Hudhaifah Hamzah, Professor Dr. Waleed Fekry Faris, Assistant Professor Dr. Wan Rohaida Wan Husain, Haji Wan Mohd Salleh Wan Abdullah, Engku Ahmad Fauzi Dato' Ungku Muhsein, Jonathan Wong Zhi Wen, Inshirah Mohd Amim, and all contributors who played a role in the successful publication of this book.

I sincerely hope this book serves as a legal reference in understanding the position of the Yang di-Pertuan Agong and Malay Rulers within Malaysia's constitutional system.

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10 March 2025

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GLOSSARY

- *Ahl al-Dhimmah* Non-Muslims who live in an Islamic state and are granted legal protection under a covenant entered into.
- Ahl al-Halli wa al-'Aqdi A council consisting of qualified scholars and nobles who make a state's major decisions, among others, including the election or removal of a caliph (ruler) on behalf of the Muslim ummah.

Allahu Subhanahu wa ta'ala - May He be praised and exalted.

Amir – a ruler, a ruling chief, or a commander.

- Bahasa Melayu is Malaysia's national language and has historically served as the lingua franca of the Malay world—a vast cultural and linguistic region that encompasses Malaysia, Indonesia, Brunei, Singapore, Southern Thailand, and parts of the Philippines. The Malay world is characterised by shared traditions, language, and historical influences, all of which have shaped the identities of its people across Southeast Asia. Beyond its role as a national language, Bahasa Melayu has been instrumental in shaping Southeast Asian civilisation, serving as a lingua franca for trade, diplomacy, cultural exchange, and intellectual discourse. Historically, it was the dominant language of the Malay Archipelago, enabling communication between diverse ethnic communities and foreign traders. Key Contributions of Bahasa Melayu:
 - 1. Ancient inscriptions The earliest Malay texts, discovered in Sumatra, Java, and Vietnam, date back to the 7th century, demonstrating a deep historical presence.
 - Islamic scholarship and Jawi script As Islam expanded in the 13th century, Malay emerged as the primary language for religious texts, extensively written in Jawi script. Jawi played a pivotal role in preserving Islamic teachings, legal documents, and scholarly works, ensuring the transmission of knowledge across generations.
 - 3. Linguistic resilience and evolution Bahasa Melayu has consistently adapted, incorporating a rich vocabulary while preserving its distinct identity. Historically, the Jawi script was the dominant writing system, used in official records, literature, and correspondence prior to the introduction of the Rumi script.
 - 4. Trade and diplomacy It functioned as the official language of the Malacca Sultanate, promoting international commerce and governance. Jawi was extensively employed in diplomatic

letters, treaties, and trade agreements, underscoring its importance in regional matters.

- 5. Cultural expressions—Malay proverbs and idioms reflect the wisdom and worldview of the Malay people, emphasising values such as cooperation, integrity, and perseverance. Many classical expressions were originally recorded in Jawi, underscoring its role in cultural preservation.
- Traditional literature Classical works such as Hikayat Hang Tuah, Hikayat Raja Pasai, and Syair Perang Siak not only entertain but also convey moral lessons and historical narratives. These texts were predominantly written in Jawi, showcasing its importance in literary heritage.
- 7. Knowledge and intellectual traditions Malay literature has historically functioned as a platform for philosophical, religious, and scientific discourse, thereby contributing to the intellectual development of the region. The Jawi script served as the medium through which scholars documented their works, ensuring the continuity of knowledge.

The Jawi script remains a symbol of Malay identity, deeply intertwined with Bahasa Melayu's historical, cultural, and intellectual legacy. Its preservation is essential for safeguarding the rich heritage of the Malay world and reinforcing Bahasa Melayu's role as a language of civilisation.

Bai'ah - 1. Allegiance between parties to uphold respective responsibilities according to Islamic injunction. 2. Obedience to a caliph.

Baligh - Puberty

- Baluk- also known as "perahu balok" is a traditional Malay canoe carved from a single large timber block and is typically used in riverine and coastal environments. As a dugout boat, it is crafted by hollowing out a solid log (balok) of durable wood such as meranti or cengal, making it one of the earliest forms of watercraft in the Malay world. Although smaller and simpler than larger trading vessels like the jong, the baluk has played an essential role in local trade, fishing, and daily transportation, particularly in rural and maritime communities.
- Bustan al-Salatin The Garden of Kings is a renowned classical Malay literary work authored by Nuruddin al-Raniri in the 17th century during the Aceh Sultanate. Composed in Jawi script, this

encyclopaedic text integrates Islamic teachings, history, morality, and political philosophy. It remains one of the earliest examples of Islamic historiography in the Malay world.

The work is divided into seven books (juz') and explores a wide array of topics—ranging from Islamic cosmology and theology, stories of prophets and Muslim rulers, to Malay and global history (covering India, Persia, China, and Europe), as well as advice for rulers grounded in Islamic ethics and governance. Bustan al-Salatin serves not only as a source of religious and historical knowledge but also as a manual for just leadership. It reflects the intellectual and cultural flourishing of the Malay world during the height of Islamic influence.

- Corpus mysticum the mystical, divine body of authority, historically linked with theological and political philosophy. The term originates from medieval Christian thought, where it was used to describe the Church as the Mystical Body of Christ—a sacred institution embodying divine authority and spiritual unity.
- Corpus Natural In legal philosophy, Corpus Natural refers to the physical body, distinguishing it from legal or symbolic representations of a person. It is central to discussions on natural rights, bodily autonomy, and legal personhood.
- Deva-raja (Sanskrit: deva-raja, meaning "god-king") is a Hindu-Buddhist political-religious concept that regards the king as a divine or semi-divine ruler, often perceived as an earthly manifestation of a deity, such as Shiva or Vishnu. Prominent in the classical kingdoms of Southeast Asia — notably the Khmer Empire (e.g. Angkor) and Majapahit polities — the deva-raja ideology legitimised royal authority through sacred rituals and temple cults, reinforcing the king's role as both a political leader and spiritual protector. The concept intertwined governance with cosmology, portraying the king as a central figure in upholding cosmic and worldly order.
- *Dhikr*, which literally means "remembrance", refers to the act of remembering, mentioning, or invoking Allah through various forms of worship. In Islamic understanding, dhikr encompasses both verbal and non-verbal acts that promote awareness and consciousness of God, including reciting the Qur'an, performing salah (ritual prayer), uttering prescribed phrases (e.g. *Subhanallah, al-Hamdu lillah, Allahu akbar*), making dua (supplication), and engaging in silent reflection. From a linguistic perspective, dhikr

signifies mention, remembrance, or recollection. Religiously, it denotes any form of devotion that strengthens the connection between the servant and the Creator, Allah SWT, whether done individually or collectively, silently or aloud.

- Din (Religion), from its linguistic roots in Arabic, denotes not only ritualistic worship but a comprehensive and habitual way of life grounded in obedience, moral responsibility, and identity. As expressed in the line of poetry by al-Muthaqqib al-'Abdi., "this is his perpetual way, and mine as well". Religion (din) encapsulates one's enduring conduct and guiding principles. In a theological sense, it is a positive and identity-forming way of life based on unwavering belief in the One True God, whose absolute authority cannot be contested by any being.
- Divine trust literally means Amanah, which encompasses responsibility, honesty, and moral integrity. It signifies the duty placed on humans by the Almighty Allah, requiring them to uphold justice, fulfil obligations, and safeguard entrusted matters.
- Doctrine of Local Circumstances- a principle of judicial interpretation that upholds the supremacy of local conditions, as established by decided cases, the Civil Law Enactment 1937, and the Civil Law Act 1956 (Revised 1972). It restricts the reception of English common law, rules of equity, and statutes of general application. *Ex-nihilo* – Means out of nothing.
- Faqih or fakih a religious scholar specialising in Fiqh, or Islamic jurisprudence. This expertise qualifies a person to interpret and apply Shariah law based on primary sources such as the Quran, Hadith, Ijma', and Oiyas.
- Fard al-Kifayah a communal obligation within Islamic jurisprudence.
 It refers to obligations that must be fulfilled by at least some members of the Muslim community. If enough individuals perform the obligation, the others are relieved of responsibility. However, if no one fulfils it, the entire community is considered sinful.
- *Fiqh* Islamic jurisprudence, knowledge of the rulings of *Shariah* as derived from the Quran and the practices of the Prophet (blessings and peace of the Almighty Allah be upon him), for these rulings can only be taken from him.
- Gurindam Duabelas Poe 12 inspired by Raja Ali Haji (1808-1873).
- *Hirabah* is an Islamic legal term that refers to violent and armed criminal acts posing a threat to public safety and social order,

such as highway robbery, banditry, terrorism, or premeditated acts of violence that instigate fear and chaos within society. It entails unlawful warfare against society, particularly through acts of aggression that hinder individuals from living or moving safely.

- *Hudud* Offences and punishments for criminal actions, as stipulated in the Qur'an and Sunnah, where the punishment must meet strict evidentiary standards.
- Hukum Kanun Johor The Legal codes of the Johor Sultanate, an extension of the Hukum Kanun Melaka governing the Sultanate of Johor-Riau Lingga and subsequent territories therefrom after the fall of the Melakan port-city. Some versions are known as Undang-Undang Johor and Qanun Sultan Sulaiman Riau.
- Hukum Kanun Melaka The legal codes of the Melakan Sultanate are codified with various customary and *Shariah* laws enforceable in the Melakan Empire or the Sultanate of Melaka. Some versions are known as Undang-Undang Melaka and Undang-Undang Laut Melaka.
- Hukum Kanun Pahang The Legal codes of the Pahang Sultanate, adopted Hukum Kanun Melaka with subsequent extension thereafter and later codified by Paduka Sri Sultan Abdul Ghaffur Muhiuddin Shah Ibni al-Marhum Sultan Abdul Kadir Alauddin Shah (r. 1592-1614).
- Hukum Kanun Perak The Legal Code of the Perak Sultanate, an extension of Hukum Kanun Melaka governing the Sultanate of Perak along with Undang-Undang 99 Perak.
- *Hulubalang* the military nobility of classical Malay kingdoms is often translated as warlord, commander, general, or warrior.
- *Ijma'* the unanimous agreement of qualified Muslim jurists (mujtahids) of a particular era after the Prophet Muhammad's death on a specific ruling of Islamic law. Following the Qur'an and Sunnah, it is recognised as a secondary source of Islamic legislation.
- *Imam* a religious leader in Islam, with responsibilities that range from leading daily prayers to occupying the highest rank as a ruler and spiritual authority.
- *Iqamat al-Din* the establishment of religion, emphasising the obligation to uphold and practise Islam in both personal and public spheres. It signifies the maintenance of faith, justice, and divine guidance as the central pillars of life.
- Istikhlaf Being a successor, choosing one's successor.

- Jong- is a large traditional Malay trading ship that was used between the 10th and 17th centuries throughout the Malay Archipelago, particularly by the maritime communities of the Malay Peninsula and Java. Constructed using indigenous Austronesian techniques and without metal nails (lashed-lug construction), it features a plank-built hull and multiple masts with canted rectangular (tanja) sails, making it capable of carrying hundreds of tons of cargo and accommodating large crews on long-distance voyages. Renowned for its massive size, durability, and craftsmanship, the jong symbolised the maritime power of the Malays and was widely recognised by Chinese, Arab, and European sources of the time.
- *Khalifah* a caliph and steward signifying both political leadership and divine responsibility in Islam. The term originates from the Arabic root (*khalafa*), meaning "successor", and is used in two key contexts:
 - 1. Caliphate Leadership—The Khalifah is the successor to the Prophet Muhammad (peace be upon him), leading the Muslim Ummah in governance and religious affairs.
 - 2. Human Stewardship In a broader sense, every individual is a *Khalifah* on Earth, entrusted by Allah to uphold justice, care for creation, and adhere to divine guidance. This concept is rooted in Surah Al-Baqarah, verse 30, where the Almighty declares mankind as His stewards.
- Laksamana Chief Admiral and high-ranking naval commander responsible for maritime affairs, defence, and often diplomatic missions. In the context of the Melaka Sultanate, the Laksamana held considerable military and political authority and played a crucial role in safeguarding Melaka's status as a thriving maritime trade hub.
- Laut Melayu Laut Melayu refers to the Malay Sea, a historical term used to describe maritime regions dominated by Malay kingdoms and their seafarers. It generally encompasses waters where Malay maritime influence was strong since the Sriwijaya Kingdom, including parts of the South China Sea, Java Sea, and surrounding archipelagos. Historically, Malay sailors, traders, and navigators have played a crucial role in shaping commerce and cultural exchanges across Southeast Asia.
- *Lèse-majesté* The act of insulting a monarch or other ruler; treason. It is a legal offence that carries severe penalties.

- Local circumstances- *Watan* and '*Urf* of Malaya, which define the conditions of the states in Malaya and their respective inhabitants. Malaya's sovereignty is firmly rooted in Malay customs, which underpin the status of the Malay Rulers. In the context of Malaysia—subject to the Federal Constitution—local circumstances encompass those of all the states federated within Malaysia.
- Malik an Arabic term meaning king, ruler, or president, signifying the holder of the highest authority within a territory, conveying ownership, dominion, and sovereignty. In Islamic tradition, Al-Malik is one of the 99 Names of Allah, referring to the Sovereign, the ultimate ruler over all creation. Historically, the title Malik has been used by various monarchs and leaders across the Muslim world.
- Maslahah Referring to public interest in Islamic jurisprudence, Maslahah is a legal principle used to determine rulings based on what benefits society and prevents harm. It is particularly invoked in cases where no explicit guidance is found in the Quran, Sunnah, or Qiyas.

Scholars such as Al-Ghazali, in his seminal work *al-Mustasfa min* '*Ilm al-Usul*, emphasized that Maslahah seeks to preserve five essential objectives of *Shariah* (*maqasid al-shari'ah*):

- 1. Religion (*Din*)
- 2. Life (Nafs)
- 3. Intellect (Aql)
- 4. Lineage (Nasl)
- 5. Property (Mal)

Different schools of thought interpret Maslahah with differing priorities, particularly in contemporary contexts where new challenges necessitate ethical and legal adaptation, such as al-Ghazali in *al-Mustasfa min ilm al-Usul*.

- *Melaka* English spelt as Malacca; This Malay spelling is maintained in this book when referring to the Sultanate and its king.
- *Mufti* A jurist in Islamic law who is entrusted with issuing religious rulings.
- *Mukallaf* a person who is morally and religiously accountable in Islam. A mukallaf must fulfil religious obligations and avoid prohibitions, as they are responsible for their actions in the Hereafter.

- Muqaddimah fi Intizam Wazaif al-Muluk Among the books written by Raja Ali Haji (1808-1873), containing advice to rulers in managing the affairs of his government.
- Mutatis mutandis a Latin phrase meaning "with the necessary changes having been made" or "with the appropriate adjustments," to render the same effect in a different context, indicating that a statement or rule applies to a new situation with only minor modifications.

Penghulu Bendahari - Chief Treasurer.

- *Qadi al-qudah (Qadi al-qudat)* A distinguished *Qadi, chief Qadi*, or judge who holds both spiritual and secular positions.
- Qisas means retaliation in kind or retributive justice; for instance, it entails a life for a life in cases of murder, with strict evidence required. Qisas and Diyyah (monetary compensation) serve as alternatives in situations where the conditions for retaliation are not fulfilled. These are two of several forms of punishment in Islamic criminal jurisprudence. The family of a deceased person may also demand *Diyyat* instead of retaliation as a form of punishment.
- Qiyas The process of analogical reasoning used in Islamic jurisprudence, whereby a ruling for a new case is deduced by comparing it to an existing case (the original case) whose ruling is established by the Qur'an, Sunnah, consensus (*Ijma'*), or valid legal reasoning.
- r.a May Allah be pleased with him/ her.
- Salaf- refers to the pious predecessors in Islam, specifically the first three generations: the Companions of the Prophet Muhammad (sahabah), their followers (tabi'un), and the followers of those followers (tabi' al-tabi'in). These generations are collectively known as Salaf al-Salih (the righteous predecessors) and are revered for preserving the authentic teachings of Islam. The term also forms the basis of Salafism, a contemporary movement advocating adherence to the practices and beliefs of these early Muslims while rejecting later religious innovations known as *Bid'ah*.
- Shahadah A declaration of the Muslim faith.
- Shariah The entire injunctions of the religion of Islam. It is what the Almighty Allah has prescribed for His creatures and what He has explained about commands and prohibitions, including Halal (permissible), Makhruh (disliked) and Haram (prohibited).

- *Sheikhul Islam* A title bestowed upon a leading jurist, equivalent to a distinguished *Mufti*.
- *Shura* A mutual consultation where the decision relies on the principles laid down in the Qur'an and Sunnah.
- Siyasah Shar'iyyah A principle of Islamic governance whereby policies and decisions are formulated by the objectives of Shariah (Maqasid al-Shariah), aiming to promote public interest and justice. These policies may extend beyond explicit scriptural texts (the Qur'an and Sunnah). They can be derived through legitimate juristic tools such as ijtihad, customs ('Urf), and legal maxims, provided they do not contradict the core principles of Islam.
- Sunnah The sayings, actions and omissions of the Prophet Muhammad (peace be upon him).
- Syahbandar Harbour Master, overseeing trade activities and customarily assigned with a certain judicial power.
- Ta'azir 1. Punishment for any Hudud and Qisas offences that do not meet the required evidence. 2. Offences and punishments distinct from Hudud and Qisas, authorised by a ruler based on Islamic principles for actions considered sinful in Islam and contrary to, but not limited to, morality, public order, and health.
- Taghlub Aggression, dominance (Taghallub).
- *Taj al-Salatin* Means "the crown of kings", the name of a book authored by Bokhari Jawhari.
- Tanah Melayu literally means the Malay Land. It is historically recognised as part of Alam Melayu, the broader Malay world. It is commonly associated with the Malay Peninsula, which includes present-day Peninsular Malaya and southern Thailand.
- Temenggong or Temenggung Chief of Internal Security and Justice.
- Thamarat Al-Muhimmah Diyafah li al-Umara' wa al-Kubara' li-Ahl al-Mahkamah – Means "Fruits that are aspired to be a banquet for kings and great men who have work in the place of law." The book written by Raja Ali Haji (1808-1873) in 1275H/1857AD and published in 1304H/1886AD in Lingga.
- *Tuhfat an-Nafis* Means "the precious gift." The name of four manuscripts written by Raja Ali Haji in Jawi circa 1866-1870. There are a few versions named after Tuhfat an-Nafis.
- *Ulil amri* those in authority who exercise sovereign powers in governance and decision-making. The term appears in the Quran Surah Al-Nisa', verse 59, where believers are instructed to obey Allah, the Messenger, and those in authority, provided they uphold justice and divine guidance. In Sunni Islam, Ulil Amri

typically refers to rulers, scholars, and leaders entrusted with governance.

- Ummah In the Quran, the term Ummah does not exclusively refer to the Ummah of the Prophet Muhammad (peace be upon him). Instead, it signifies a group of people who share common religious beliefs and can also denote communities with their own messengers. For instance, the Quran employs the word Ummah to refer to historic communities, such as the Ummah of Prophet Musa (Moses) and the Ummah of Prophet Isa (Jesus), peace be upon them.
- Undang-Undang 99 Perak Was introduced by Sayid Hussain Al-Faradz of Hadramaut in the 17th century during the reign of the 11th Sultan of Perak, Sultan Mahmud Iskandar Shah (1653-1720). Initially, it contained 40 clauses. Sayid Hussain's descendants used the text of this law while serving in the Perak Palace. Among them are Sayid Abu Bakar, Sayid Abdul Majid, and Sayid Jalaludin.
- Undang-Undang Kedah Coded as MS 40329, this version was sourced from the School of Oriental and African Studies (SOAS), London, and transliterated by Mariyam Salim. It was later published by Dewan Bahasa dan Pustaka in 2005. It consists of Undang-Undang Pelabuhan (The Laws of Port), Undang-Undang Seri Paduka Tuan (The Laws of Seri Paduka Tuan) and Hukum Kanun Datuk Kota Setar (The Legal Code of Datuk Kota Setar).
- *Undang-Undang Sungei Ujong*—The Laws of the territory of Sungei Ujong. It is believed the Laws were proclaimed by its ruling chief when Sungei Ujong emerged as an independent state from the Sultanate of Johor-Riau Lingga.
- ^c*Urf* a customary practice commonly accepted and practised by a particular society, which does not contradict the principles of Islam. It represents a social norm that has gained legitimacy through consistent communal acceptance and usage. It may be considered in Islamic legal reasoning (ijtihad) as long as it aligns with *Shariah* principles.
- *Uti possidetis* A principle in international law that recognises a treaty as granting each party the territory and property it controls unless otherwise stated. In Latin, it means as you possess, so may you have.
- Wa'adat Sang Sapurba A revered oath of the Malay made between Sang Sapurba and Demang Lebar Daun. This revered oath defines the relationship between Malay Rulers and their subjects.

- Wali an Arabic term meaning custodian, guardian, or protector. In Islamic tradition, a wali has authority over someone or something, ensuring their well-being and safeguarding their rights in various capacities: legal guardian, Sufism, and politics.
- *Watan* embodies local circumstances by integrating history, language, ethics, worldview, culture, customs, philosophy, civilisation, beliefs, and religion into a nation's holistic consciousness, shaped by intellectual traditions and spiritual orientation.

Wazir al-Adzim – A high-ranking minister or advisor.

White Paper on Constitutional Proposals for the Federation of Malaya 1957- This White Paper aims to describe the more important constitutional proposals. Changes to the recommendations of the Constitutional Commission, chaired by Lord Reid, were made. The Report of the Federation of Malaya Constitutional Commission, consisting of recommendations for the future Constitution of the Federation, was formally submitted to Her Majesty The Queen and Their Highnesses the Rulers and published on 21st February 1957 (Colonial No. 330). It then became the task of Her Majesty's Government, the Conference of Rulers, and the Government of the Federation to consider the recommendations in this Paper. As a first step, a Working Party was appointed in the Federation to examine the Report and submit recommendations thoroughly. This Working Party, consisting of the High Commissioner, four representatives of Their Highnesses the Rulers, four representatives of the Government of the Federation, the Chief Secretary, and the Attorney-General, held 23 meetings between 22nd February and 27th April. It reported to the Federal Executive Council on 3rd and 6th May, to the Conference of Rulers on 14th March, 10th April, and 7th May.

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THE MALAY RULERS

This book restores the long-overlooked worldview and legal status of the Malay Rulers' position. For too long, legal practitioners have relied on historical narratives that often ignored crucial legal texts and official records when addressing key issues of sovereignty, colonisation, advisory system, and independence in the Peninsula of Tanah Melayu. What sets this work apart is its foundation: written by a lawyer-turned-academic, grounded in meticulous research of primary legal documents and official records, then rigorously analysed through a jurisprudential lens. The insights offered here provide a legal framework that can assist courts in interpreting Articles 38(4) and 181(1) of the Federal Constitution, while offering clarity to all seeking a proper understanding of the role and standing of the sovereign Malay Rulers - **YB Senator Dato' Setia Haji Salehuddin Saidin, Dewan Negara Malaysia and Member of the Selangor Royal Council.**

I appreciate this valuable addition to knowledge that Datuk Dr. Wan Ahmad Fauzi Wan Husain contributed in this book. The constitutional bases and the formative principles through which the Malay Rulers govern is an important topic to study, hence the significance of this book. The purpose is to understand how this influential country in our Islamic Ummah, Malaysia, succeeded to function and flourish as a deeply-Islamic and yet multi-religious, multi-cultural, and multi-ethnic society. The genuine and dynamic Islamic lens through which Datuk Dr. Wan Ahmad presents his analysis is commendable and much-needed - Jasser Auda, PhD Visiting Distinguished Professor, ISTAC-IIUM and Chairman, Maqasid Institute for the Studies of the Quran MISQ, Canada.



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